

## CHAPTER 9 – MODIFICATION AND EXTENSION OF DOMESTIC VIOLENCE ORDERS

**STATUTORY REFERENCES:**     **RSA 173-B:5 (Relief)**  
   **RSA 173-B:8 (Notification)**

### **A.     MODIFICATIONS**

#### **INTRODUCTION**

RSA 173-B:5, VIII provides that no order issued under RSA 173-B can be modified other than by court order. Temporary reconciliation of the parties will not revoke an order. A defendant who is restrained from contacting the plaintiff or entering the plaintiff's residence is prohibited from doing so, even if invited by the plaintiff. If either party wishes to have any provision of the order changed, the proper remedy is to request the court to modify the order. It is important for the parties to understand that regardless of any contact, the provisions of the restraining order remain in effect and enforceable against the defendant until they are modified by the court.

RSA 173-B:5, VIII-a provides that upon issuance of a protective order containing a "no-contact" provision, the court shall advise the plaintiff that it would be unwise and possibly unsafe for the plaintiff to contact the defendant. The plaintiff shall be advised that contact should occur only after the plaintiff has requested and obtained a court modification of the existing order. The plaintiff must be advised that in the event of an emergency, the plaintiff or a member of the plaintiff's family may request that the local law enforcement agency contact the defendant and accompany the defendant to a designated meeting place, such as a hospital.

**NOTE:**            Contact by the plaintiff, although ill advised, does not constitute a violation of the protective order, which is issued against the defendant. It does not subject the plaintiff to criminal liability, but it does subject the defendant to possible criminal prosecution.

#### **PROTOCOL 9-1**

At the temporary and/or final hearing where a protective order has been issued, the court should advise the plaintiff of the following: Any contact with the defendant would be unwise and potentially dangerous. If an emergency arises where contact with the defendant is necessary, the

plaintiff or a member of the plaintiff's family should request the assistance of the local police department. The plaintiff or family member should ask that a police officer contact the defendant and accompany the defendant to a designated meeting place, where contact can be made in a supervised setting.

### **PROTOCOL 9-2**

The parties should be advised that any contact by the defendant with the plaintiff would be considered a violation of the order for which the defendant could be arrested and punished.

### **PROTOCOL 9-3**

The parties should be advised that the provisions of the protective order will remain in effect until the order expires or the court modifies the order. Even if there is contact to which the plaintiff consents, that contact does not void the restraining order. (See RSA 173-B:5, VIII (c))

### **PROTOCOL 9-4**

The parties should be advised that if either person wants to have any provision of the order changed, that person should request that the court modify the order. Unless the court grants a modification, the existing order will remain in effect as an enforceable order.

### **PROTOCOL 9-5**

If a party seeks to modify the terms of a final order, the court shall send a copy of the request to the opposing party along with a notice that said party has **ten (10) days** within which to object. Such a request for modification shall be in writing. If no objection is received, the court may either schedule a hearing on the request or act on the written request for modification without a hearing. Copies of all modified orders shall be provided to the parties and local law enforcement agencies, pursuant to these protocols.

#### *COMMENT*

If the request for modification is from the defendant or is for a change in the contact between the parties, the court should schedule a hearing.

### **PROTOCOL 9-6**

Any modified orders should be immediately provided to the appropriate law enforcement agency, the Administrative Office of the Courts, and the defendant.

#### *COMMENT*

RSA 173-B:8, III requires that modification orders be transmitted to the Department of Safety **within 24 hours** of issuance. However, the Department of Safety no longer accepts such orders. It only maintains a registry of emergency telephonic

orders. The Administrative Office of the Courts is now responsible for entering orders of modification, expiration, or withdrawal into the Protective Order Registry and NCIC. The purpose of the statutory provision requiring transmission of the order to the Department of Safety was to make the information readily available to law enforcement officers statewide. That purpose is served when the order is entered into the Protective Order Registry and NCIC.

## **B. EXTENSION OF ORDERS**

RSA 173-B:5, VI (Relief) provides that a domestic violence order may be extended upon motion of the plaintiff, showing good cause, with notice to the defendant. A defendant has a right to a hearing on the extension of any order **within 30 days** of the extension.

### **PROTOCOL 9-7**

**Thirty days prior** to the expiration of a final order, the clerk shall send a notice to the parties of the impending expiration.

### **PROTOCOL 9-8**

A plaintiff may request an extension of a final order prior to the expiration of the order. This request must be in writing. Provided that the plaintiff's request alleges good cause for an extension of the order, the court should issue an order extending the original order, which will remain in effect for an additional year unless an objection is filed pursuant to Protocol 9-9. The order shall be issued and delivered to the local law enforcement agency having jurisdiction to enforce said order, as well as transmitted to the Administrative Office of the Courts.

### ***COMMENT***

A request for extension does not require a showing of a new incident of abuse. The Plaintiff must only allege good cause for why she continues to be in fear for her safety. An example might be the defendant's recent release from incarceration following conviction for assault on the plaintiff.

### **PROTOCOL 9-9**

Upon receipt of the plaintiff's request, the court must send a copy of the plaintiff's motion and the court's order to the defendant, along with a notice that the defendant has **10 days** within which to object. The defendant should be informed that, in the event of an objection, the court will schedule a hearing. Provided the plaintiff's petition alleges good cause for an extension of the order, the defendant must also be advised that the original order has been extended, however, the court may modify or vacate the order of extension at the hearing.

#### **PROTOCOL 9-10**

If the defendant objects to the extension of the final order, the court shall schedule a hearing on the defendant's objection **within 30 days** of receipt of said objection.

#### **PROTOCOL 9-11**

If a plaintiff requests an extension of a final order after the order has expired, the plaintiff should be instructed to file a new petition for temporary *ex parte* relief. It is not necessary that the plaintiff allege new facts in the petition. The court should grant the petition if the plaintiff refers to the original order and shows good cause why that order should be extended, provided the court finds that the defendant continues to present a credible threat to the plaintiff's safety. The court should then proceed in accordance with the protocols set forth in Chapter 5.